

REMARKS

The Office Action rejected each of the outstanding Claims 1-57 as being indefinite. Applicant has accordingly amended the claims and has addressed both the 35 U.S.C. § 112 issues and further the cited 35 USC § 101 issues. It is believed there is more than adequate structure now defined to meet the requirements of 35 USC § 101. If this remains an issue, the undersigned attorney would appreciate a telephone conference on this matter.

The Office Action rejected the original Claims 18, 17-19, 27-34 and 36-57 over the resource managing method of the *Seikichi* Japanese Laid Open Application 81-23700.

The *Seikichi* reference addresses improvements purportedly in execution performance at the end of a thread and at the time of thread reproduction by providing a decisional judgment as to whether the request to recover the program area is a request at the end of the thread or a task. If it is decided that a request is a dynamic request, the process is ended. If, however, it is decided that the request is a recovery request at the end of the thread, the resources that the thread has are recovered and the process is ended. If, however, it is determined that the request for resources is at the end of the task, the resources that the task has are recovered and then the process is ended.

As the Examiner is aware, in relying upon a foreign patent to reject a claim, this reference must be strictly construed and restricted to what is clearly and definitely disclosed.

In relying upon a foreign patent to reject a claim, the Patent Office must construe the disclosure of the foreign reference strictly, and restrict the references to what is **clearly** and **definitely** disclosed.

CITC Industries, Inc. v. Manow International Corp.,
193 U.S.P.Q. 366, 368 (S.D.N.Y. 1996)
(emphasis in original).

Referring to newly drafted Claim 58, a plurality of devices and an application execution apparatus are managed by a plurality of library units in a one-to-one correspondence.

Through the resource providing means, the requesting means, and the collecting means, each individual library unit provides a correspondence device to an application as a resource and collects the resource when the application ends. This produces a specific effect of simplifying a process of adding a new device to the application execution apparatus, since the addition can be done simply by adding a library unit corresponding to the new device to the application execution apparatus with there being no need to further modify the entire OS to include a collection procedure for that device. This specific effect can equally be achieved according to Claim 58 and Claim 77.

By comparison, the *Seikichi* reference neither discloses nor suggests a construction corresponding to a plurality of library units. Therefore, it would have been impossible to achieve the specific effect of Claims 58 and 77 and their dependent claims, based on the disclosure of *Seikichi*.

Original Claims 20-22, 26 and 35 were rejected over a combination of *Seikichi* and the *Alexander et al.* U.S. Patent No. 6,560,773 under 35 USC § 103.

According to new Claims 64 and 79, through a first table holding means, a first table renewing means, and the controlling means, each device, provided to an application as a resource using threads for executing the application, is managed in correspondence with the application and a task to which the application belongs. Therefore, the device resource provided to the application can be collected when the application ends. This produces a specific effect of realizing resource collection in an application execution apparatus which is equipped with Java middleware that itself does not perform collection of resources provided to an application even when the application ends.

The *Seikichi* and *Alexander* references neither disclose nor suggest a means for managing device resources in correspondence with applications, nor a means for collecting device resources. Accordingly, it would have been impossible for achieving the specific effect of Claim 64 and 79 and their dependent claims, based on the disclosure of these references.

In Claim 71, each device provided to an application as a resource is managed in correspondence with the application through a notifying means and a resource providing means. The device resource provided to the application can be collected when the application ends. By this combination of elements, a specific effect of realizing resource collection in an application execution apparatus is achieved when equipped with Java middleware that itself does not perform collection of resources provided to an application even when the application ends.

The *Seikichi* reference neither discloses nor suggests a means for managing device resources in correspondence with applications, nor does it disclose a means for collecting device resources. Accordingly, it would have been impossible to achieve the specific effect of Claim 71 and its dependent claims, based on the disclosure of *Seikichi*.

Finally original Claims 23-25 were rejected over a combination of *Seikichi*, *Alexander* and the *Konuru et al.* U.S. Patent No. 6,654,948.

Konuru et al. taught monitoring object-oriented programs and more particularly a partial monitoring without limiting the kinds of information filtering criteria by complying with specific sequencing rules when reporting a subset of monitored events.

It is not seen how either *Seikichi* or *Alexander* could be modified to incorporate the sequencing rules of *Konuru et al.* without resorting to hindsight from the present application.

As noted in the case of *In re Rijckaert*, 28 USPQ2d 1955 (CAFC 1993):

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1143, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested that claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) quoting *In re Reinhart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned.

* * *

Rijckaert argues that the examiner has not established a *prima facie* case of obviousness and that the examiner's assumptions do not constitute the disclosure of prior art. We agree.

Even hypothetically accepting a teaching reference, the present claims still are patentable.

According to Claim 81, a different divided heap area is acquired from the memory heap area for each of the plurality of applications, by the divided heap area acquiring means. When an object relating to an application is generated, that object is allocated exclusively in a divided heap area acquired for the application by the allocation controlling means. If the object is not allocable in the divided heap area, garbage collection is performed on the divided heap area to secure enough space for allocating the object in the divided heap area. Hence the area subjected to garbage collection when an object is not allocable is significantly reduced, when compared with the case where the object is allocated in the entire memory heap area. This produces specific effects of reducing the load required for garbage collection, and of being able to continue, while garbage collection is performed in one divided heap area, the execution of other applications whose objects are allocated in other divided heap areas in the memory heap area.

Certainly the *Seikichi* reference neither discloses nor suggests a construction corresponding to this allocation controlling means. Accordingly, it would have been impossible to achieve the specific effects of Claim 81 and its dependent claims, based on the disclosure of *Seikichi*. Additionally, neither *Alexander et al.* nor *Konuru et al.* are capable of teaching an allocation controlling means in the manner defined by our current claims.

It is believed that the case is now in condition for allowance, and an early notification of the same is requested.

If the Examiner believes that a telephone interview will help further the prosecution of this case, he is respectfully requested to contact the undersigned attorney at the listed telephone number.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 28, 2005.

By: Sharon Farnus

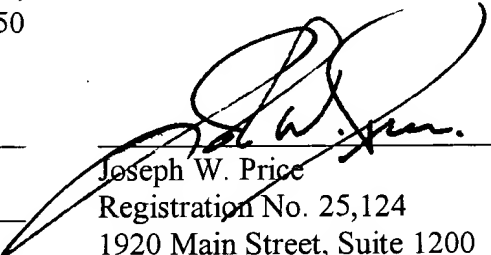
Sharon Farnus

Signature

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Very truly yours,

SNELL & WILMER L.L.P.



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